IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1109 of 1987

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ILABEN BHIKHAUBHAI LUHAR & 4 - Appellant(s)
Versus
GUJ STATE ROAD TRANSPORT CORPN & 3 - Defendant(s)

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Appearance :
MR RJ GOSWAMI for Appellant(s) : 1 - 5, 5.2.1, 5.2.2,5.2.3
MR HARDIK C RAWAL for Defendant(s) : 1,
MR DARSHAN M PARIKH for Defendant(s) : 2,
MR PV NANAVATI for Defendant(s) : 3,
MR VIBHUTI NANAVATI for Defendant(s) : 3,
None for Defendant(s) : 4,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 20/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

In a vehicular accident which took place on 22.12.1982, a truck and State Transport bus had collided. In the said accident, three persons lost their lives and others were injured. In all 27 claim petitions were filed before the Mother Accident Claims Tribunal (Main), Bharuch. They were disposed of by common judgment dated 30.8.1986.

Present appeal is filed by the appellants-Ilaben, widow of deceased-Bhikhubhai, who died in the accident which took place on 22.12.1982 at an young age of only 36 years, leaving behind him his widow and two minor sons and old parents, claiming remaining amount, which was not awarded by the learned Tribunal, in its impugned common judgment and award.

Before the learned Tribunal, the claim was Rs.3,97,525/-. However, under some misconception,

learned Tribunal awarded only Rs.1,50,000/- though the learned Tribunal itself had come to the conclusion that the claimants were entitled for more. Hence, for the remaining amount, present appeal is filed.

In para 67 of its impugned judgment and award, the learned Tribunal has observed that the claimants claimed Rs.1,50,000/- in M.A.C.P. No.326/83 for the death of Bhikhubhai Pranjivandas Luhar. In fact, they had claimed Rs.3,97,525/- in the claim petition, which is clear from page 5 of the judgment of the learned Tribunal. For satisfying ourselves, we have also perused record and proceeding of the claim petition filed before the Tribunal and from the Claim Petition filed by the claimants also it is clear that they had claimed, in all, Rs.3,97,525/- and not Rs.1,50,000/- as observed by the learned Tribunal in para 67 of its common judgment.

In the instant case, the deceased-Mr.Bhikhubhai Pranjivandas Luhar died at the young age 36 in an accident which took place on 22.12.1982. Just a year before i.e. in 1981 he was employed as a Junior Engineer. Pay bill of December, 1982 – Ex.303 produced before the learned Tribunal shows that his total pay, including Dearness Allowance was Rs.1,583.35. Looking to his young age and considering his future chances of promotion to the post of Deputy Engineer, his average salary would have been Rs.2,375/-, therefore, deducting 1/3rd amount, the dependency could be easily considered at Rs.1,500/- p.m. i.e. Rs.18,000/- p.a. In view of the latest judgment of the Hon'ble Supreme Court in case of ***U.P.State Road Transport Corporation vs. Krishna Bala & Ors. Reported in 2006 AIRC SCW 3613***, multiplier of 13 should be applied, which comes to Rs.2,34,000/-. The claimants would also be entitled for additional amount of Rs.15,000/- for loss of expectation of life. They would also

be entitled for Rs.1,000/- for funeral charges etc. Thus, in all, they are entitled for the claim of Rs.2,50,000/-. However, we noticed from the judgment of the learned Tribunal that surprisingly without any basis, the learned Tribunal awarded Rs.1,000/- p.m. by way of loss of dependency and applying multiplier of 15 the learned Tribunal was of the opinion that the claimants are entitled for Rs.1,80,000/-

Learned Tribunal has considered the loss of dependency of Rs.1,000/- p.m. on the basis of the evidence of widow, who had stated that her husband was paying Rs.1,000/- p.m. However, prospective loss of income was not at all taken into consideration by the learned Tribunal. At that time, normally multiplier of 15 was applied, but now in view of the latest judgment of the Hon'ble Supreme Court, it could be only 13. The learned Tribunal though was of the considered opinion that towards loss of dependency, the claimants were entitled for Rs.1,80,000/-, but

the claimants had claimed Rs.1,50,000/-, therefore, they were awarded only Rs.1,50,000/-. At the cost of repetition, we must state that there was some misconception on the part of the learned Tribunal on the point that the claim of the claimants was only Rs.1,50,000/-, whereas, in fact, it was Rs.3,97,525/-

In view of the above, we are of the considered opinion that the appellants-claimants would be entitled for Rs.2,34,000/- by way of loss of dependency, Rs.15,000/- towards loss of expectation of life and Rs.1,000/- for funeral charges etc. Thus, in all, the claimants were entitled for Rs.2,50,000/-, whereas, the learned Tribunal has awarded only Rs.1,50,000/-. Therefore, this appeal has to be partly allowed and accordingly, it is partly allowed and it is held that the appellants would be entitled for additional sum of Rs.1,00,000/- with costs and interest @6% from the date of application till realisation from the respondents, as awarded by

the learned Tribunal in its impugned common judgment and award. Accordingly, appeal is partly allowed with costs.

(B.J.SHETHNA, J.)

(M.D.SHAH, J.)

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